

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)
description of case

Civil Writ Petition No. 555 of 2001 (S/B)
(Old No. 6383 of 1990)

Sri Jagdish Parsad Petitioners

Versus

The Deputy Director Education,
And another. Respondents

Date of decision: 21, September 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)
- Whether the reporters be allowed to see the judgment? (Yes)

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL**

**Writ Petition No.555(S/B)2001
(Old No. 6383 of 1990)**

Sri Jagdish Prasad Bahuguna Petitioners

Vs.

1. The Deputy Director of Education Garhwal Mandal, Pauri Garhwal.
2. The Assistant Director of Education (Basic), Garhwal Mandal, Pauri Garhwal.

...Respondents.

Sri J.C. Pandey, Advocate learned counsel for petitioner
Sri Pitambar Molekhi, Additional Advocate General, State of Uttarakhand for the respondents.

Hon'ble P.C. Pant – J.

1. By means of this writ petition, moved under article 226 of Constitution of India, the petitioner has sought that the order dated 20.02.1990 passed by the respondent No.2 reverting to the petitioner to the post of Peon, be quashed.
2. Brief facts of the case as narrated in the writ petition are that the petitioner was initially appointed as peon vide order dated 09.10.1980 (copy annexure 1 to the writ petition) in the Education department of the State. Since the post of senior clerk in the department was lying vacant, on 20.09.1986, one Sri Prakash Chand Nautiyal, a routine clerk was promoted as senior clerk in the office of respondent No.2 on 20.09.1986. Consequently, the petitioner was promoted to the post of routine clerk in place of Sri Prakash Chand Nautiyal. Copy of said order of promotion is annexed as annexure 3 to the writ petition. The petitioner has worked to full satisfaction of his superiors. On 20.02.1990, respondent No.1 transferred Sri Surendra Singh Rawat in the post of senior clerk. Consequently, the respondent No.2 reverted the petitioner to the post

of peon. Copy of impugned order dated 20.02.1990 by the petitioner, by which he was reverted is annexed as the annexure 4 to the writ petition. Aggrieved by said order of reversion, the petitioner has challenged the same through this writ petition on the ground that the order is arbitrary and illegal.

3. A counter affidavit has been filed on behalf of the respondent in which it is admitted that petitioner was appointed on Ad-hoc basis in the post of Junior clerk vide order dated 20.09.1986 in consequence to the order of promotion of Sri Prakash Chand Nautiyal to the post of Senior clerk. It is also admitted that Sri Surendra Singh Rawat was appointed as Senior clerk on his transfer vide order dated 20.02.1990. On said date one Sri Brajendra Mohan Singh Kathait was officiating in the post of senior clerk who had to be reverted to back to junior clerk. Consequently, the petitioner was reverted vide order dated 20.02.1990 to the post of peon. It is further stated in the Counter affidavit that when again the post of junior clerk fell vacant in August 1994, the petitioner was promoted under ruled against the promotional quota of class IV employees. As such during the pendency of writ petition the petitioner has been promoted in the month of August, 1994 as Junior clerk on regular basis. As such the dispute raised by the petitioner practically relates to the salary for the period 20.02.1990 to 10.08.1994. It is further submitted in the Counter affidavit that since the earlier promotion was only Ad-hoc, the petitioner has no right to the post of Junior clerk was rightly reverted when the regular senior clerk joined his duties and the person holding that post was reverted as Junior clerk.

4. I heard learned counsel for the parties and perused the affidavits, Counter and Rejoinder affidavit alongwith annexures annexes there to.

5. The short question for consideration before this court is that whether the reversion of petitioner on 20.02.1990 to the post of peon is illegal as alleged by the petitioner.

6. Admittedly, the petitioner was initially appointed as peon. It is also admitted that in 1986 he was promoted on Ad-hoc basis as junior clerk in consequence of Ad-hoc promotion one Sri Prakash Chand Nautiyal. It is also not disputed that when one Sri Surendra Singh Rawat, a regular appointee joined his duties as senior clerk, the petitioner was reverted back vide impugned order dated 20.02.1990 as peon in consequence of the reversion of another employee who was officiating as senior clerk. It is also admitted that in the month of August, 1994, the petitioner has been again promoted as junior clerk on regular basis within the promotional quota of class IV employee and working as junior clerk. As such the dispute relates to the period from 20.10.1990 to August,1994 if the petitioner had a right to continue as Junior clerk. The learned counsel for petitioner, in the argument submitted that the petitioner was promoted in consequence Ad-hoc promotion of Sri Prakash Chand Nautiyal, while the person reverted back as junior clerk was Sri Brajendra Mohan Singh Kathait. He further submitted that there are two posts of routine grade clerks and petitioner was not required to be reverted aspeon in February,1990. However, there is no mention of this averment in the writ petition or affidavits annexed thereto. The learned counsel for the petitioner made efforts to convince this court by referring the

annexures to the Rejoinder affidavit and submitted that one Km. Sunila Naithani was the person against whom Sri Brajendra Mohan Singh Kathait has joined his duties. No new facts stated in the Rejoinder affidavit need to be considered as same can not be replied by the respondent. Apart from this assuming for a movement Sri Brajendra Mohan Singh Kathait came in place of Km. Sunila Naithani, the annexure No.1 to the Rejoinder affidavit shows that it was the matter of 1988 and not of the 1986. As such it can not be ruled out if some one senior most of the staff, meanwhile after 1988 officiated of the post as senior clerk. Otherwise also mere Ad-hoc promotion does not give, the also mere Ad-hoc promotion does not give, the petitioner a right to continue in the post. The order of Ad-hoc promotion as well as impugned order of reversion are reasoned orders.

7. On the part of the respondent no arbitrariness appears to have been acted against the petitioner. When his regular promotion became due he was promoted again vide order dated 10.08.1994 which annexure 3 in the supplementary affidavit filed by the petitioner that Civil Miscellaneous application dated 20.01.1999.

8. Learned counsel of petitioner drew my attention to the Regularization Rules 1988 and submitted that he was entitled to be regularised when he was a Ad-hoc employee. The said rules are applicable when the vacancies are available for the regular appointment

since it is not the case of the petitioner in the writ petition, these rules do not help to the petitioner.

9. In the facts and circumstances and above discussions, this court is of the view that the impugned reversion order does not suffer from any illegality. Accordingly, the writ petition is dismissed. No order as to costs.

Dated : September 21, 2004
J.K. Jain

(P.C. Pant J)